



July 23, 2002

Ms. Myra A. McDaniel
Bickerstaff, Heath, Smiley, Pollan, Keever & McDaniel, LLP
816 Congress Avenue, Suite 1700
Austin, Texas 78701-2443

OR2002-4040

Dear Ms. McDaniel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166034 .

The Austin Community College ("ACC") received a request to inspect "all documents, correspondence, requests for advice, information given, etc. given to, by, and from this law firm and/or any other, including in-house attorneys on any legal considerations of any and all issues dealing with matters I have or may have raised since my attendance at ACC, since 1999, dealing with me specifically, under the open records act." You state that ACC does not employ in-house attorneys. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.107(1) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state that the requestor is a student. The Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, governs the availability of student records held by educational agencies or institutions that receive federal funds under programs administered by the federal government. FERPA gives a student attending an institution of post-secondary education a right to inspect that student's education records. *See* 20 U.S.C. § 1232g (a)(1)(A), (d). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). An "educational agency or institution" is "any public or private agency or institution" that receives federal funds under an applicable program. *Id.* § 1232g(a)(3). We believe that the information at issue consists of the requestor's "education records" for purposes of FERPA. *Cf.* Open Records Decision No. 462 at 15 (1987) (applying FERPA to information about student athletes prepared by law firm acting as university's agent.). Therefore, FERPA requires ACC to give the requestor here, as the student to whom the records relate, the right to inspect the requested information, unless one of the exceptions you raise applies. *See* Open Records Decision No. 229 (1979).

For the information submitted in Exhibit 2, you raise section 552.107(1) of the Government Code, which excepts from disclosure information that an attorney cannot disclose because of a duty to his client. The Family Policy Compliance Office of the United States Department of Education has informed this office, in an unrelated file, that a parent's right to information about his child under FERPA does not prevail over a school district's right to assert the attorney-client privilege. We will, therefore, consider your claim of exception under section 552.107.

In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). After review of the information, we conclude that ACC may withhold from disclosure the information in Exhibit 2 based on section 552.107(1).

You contend that section 552.103 excepts the information you submitted as Exhibit 3. This exception to disclosure may not be applied to deny a parent the right to inspect his child's education records under FERPA. *See* Open Records Decision No. 431 at 3 (1985). Because the student here is attending an institution of post-secondary education, the parent's right is accorded to the student. 20 U.S.C. § 1232g (d). The requestor here is the student about whom the records concern. Consequently, we do not consider your section 552.103 claim. FERPA requires ACC to release the information in Exhibit 3 to the requestor.

In summary, ACC may withhold from disclosure the information in Exhibit 2 based on section 552.107(1) of the Government Code. ACC must release the remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on

the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 166034

Enc: Submitted documents

c: Mr. Spencer Nutting
P.O. Box 5248
Austin, Texas 78763
(w/o enclosures)